IN THE

SUPREME COURT

OF THE

UNITED STATES

Crystal Springs Land and Water Company and S. G. Murphy,

Complainants and Appellants,

vs.

The City of Los Angeles,

Defendant and Appellee.

BRIEF FOR APPELLEE.

As stated in appellant's opening brief, the sole question involved is that of jurisdiction, as the United States Circuit Court for the Southern District of California dismissed the bill of complainants on the ground that the case was not one really and substantially involving a dispute or controversy properly within the jurisdiction of the court.

The bill was filed by the appellants evidently under the statute of the State of California, which authorizes an action to be brought for the

purpose of quieting the title to real estate generally without the necessity of showing any particular defect, or that there is a cloud on such title.

Section 738, Code of Civil Procedure.

We say that such is the object of the bill, as the prayer is for a general decree quieting title, although there are set up in the body of the bill several statutes of the State which, as appellants claim, have the effect of depriving them of their property without due process of law, and which are contrary to the treaty of Guadalupe Hidalgo; but the bill does not show as a matter of fact that the defendant claims title solely through these statutes, but, on the contrary, alleges that the City claims to be the owner of the property in controversy "by virtue of the laws of Mexico governing and "regulating and fixing the rights of a pueblo to "the waters of streams flowing through the said "pueblos, and by the said several acts of the "Legislature."

Paragraph XXIII of Bill.

The property, the title to which is thus sought to be quieted, consists of certain so-called "percolating" waters, which are alleged to have been developed by complainants and their predecessors, by means of excavations made either in land owned by them, or in land upon which the right of development had been acquired.

The defendant demurred to the bill for want of jurisdiction, and the Circuit Court over-ruled the demurrer on the ground that, while a federal question was not involved so far as it arose on the treaty of Guadalupe Hidalgo, yet that, as one of the acts of the Legislature, above referred to, had the effect of depriving the complaints of their property without due process of law; this gave rise to a federal question which conferred jurisdiction.

Record, folios 83–89.

These statutes were acts incorporating the defendant—its charters—and they purport substantially to grant to the City all of the waters *flowing* in the Los Angeles River, and the right to develop the waters *flowing* beneath the surface in the bed of the same river, the bill charging that defendant claims that the alleged percolating waters, developed by complainants or their precedessors, were part of the stream.

Record folios 14–17.

The defendant then answered, disclaiming any right under the acts of the Legislature mentioned in the bill, or under any other act of the Legislature, so far as the right was ever vested in the complainants or their predecessors in interest; and upon the coming in of the answer the court dismissed the bill on the ground that

such disclaimer removed the only federal question which was involved.

See Opinion, Record, folios 100–120.

I

That the case does not involve a federal question, is, we submit, conclusively shown by the opinion of the learned judge of the court below.

The attempt to conjure up a case within the jurisdiction of the United States Circuit Court, by the setting up of the acts of the legislature mentioned in the bill, is a very lame one.

The bill does not attempt to show that any act of the legislature purported to deprive the complainants or their predecessors of any property, and the only statute which has any appearance of attempting to do this is the charter of 1878, which is set up in an amendment to the bill in folios 30–1 of the record.

The charters of 1874 and, 1876 (folios 14–16 of records), expressly reserved all vested rights of third parties.

The charter of 1878 does not refer to complainants or to any third person, and does not justify the conclusion that it was the intention of the legislature to attempt to take away the property of private persons, and transfer them to the city of Los Angeles.

The reasonable construction of this provision of the charter containing the grant is that the

legislature intended to transfer to the city any rights which were vested in the State, and to declare the existence of a fact which already existed.

The charter was simply a conveyance by the State, and if the State has no interest in the property to transfer, nothing passed.

A legislative grant is on the same footing as one by government patent or other conveyance.

Rutherford v. Green, 2 Wheat. 196.

Complainants do not claim title under the State, and, therefore, the conveyance cannot be considered as a clond on their title.

Moreover, the charters all refer to the water *flowing* beneath the surface in the bed of the river, and do not purport to give the city the right to develop *percolating* waters; the object of the statutes being, as said by Mr. Justice Temple in Vernon Irrigation Company v. City of Los Angeles, 106 Cal. 253, to allow the water to be *saved* and not to *develop new water.*

As remarked in the last cited case [page 253] "it will hardly be claimed that the legislature "could grant to the city the water of the river so "as to deprive riparian owners of it."

Nor will it be claimed by any one in good faith that the charter provision has the effect of destroying vested rights, or that it is anything more than a quit claim on the part of the state

and a declaration of a fact which was supposed to (and did in truth) exist.

It is a settled rule of construction that a State statute will be so interpreted as to harmonize with the federal constitution, if the language used by the legislature is reasonably susceptible of such construction.

Grenada Co. vs. Brogden, 112 U. S. 261.
Cooley Const. Lim., 218–219.

The charter of 1889, which is claimed in the brief of appellants to also have the effect of depriving them of their property, is not a statute of the state, but was adopted by a vote of the electors of the city and approved by the legislature in accordance with the provisions of the State Constitution.

This charter does not, any more than the one of 1878, purport to affect the property rights of third parties.

But it was not pleaded in the bill, and it is settled that, where a statute is relied on in cases like the present, it must be brought to the attention of the court in the pleadings and will not be taken judicial notice of.

Powell v. Supervisors, 150 U. S. 433.

The original act incorporating the city of Los Angeles, passed in 1850, is also claimed to have the same effect attributed to the other charter, although this act, too, was not pleaded.

This last mentioned statute simply declares that the property, which was owned by the original Mexican pueblo, should be vested in the new municipality; and how it could be seriously claimed that this had the effect of depriving the predecessors of appellants of their property is beyond our comprehension.

It has, in many cases, been held that there must be some foundation for the claim that a federal question is involved, and, that it will not do merely to allege that such is the case without setting up distinctly the facts which justify such a conclusion.

The bill does not expressly claim that the statutes in question had the effect of violating a provision of the federal constitution, and the contention that they did have this effect is evidently an afterthought occurring to complainants after the suit was brought.

If this bill is maintainable at all, it is on the ground that a federal question is involved, for there is no diverse citizenship; and therefore, while the United States Circuit Court will administer the laws of the State in suits over which it has jurisdiction *by reason of the citizenship of the parties*, and in such cases will afford the remedies given by the statutes although they may extend the jurisdiction formerly exercised by courts of chancery. yet, in all cases where jurisdiction is assumed on account of the

controversy depending upon a federal question, the United States Courts do not modify the rules of pleading prevailing in the High Court of Chancery.

The charters, which were claimed to be obnoxious to the constitution of the United States, if they have that effect, are void on their face, and therefore do not constitute a cloud on the title of complainants.

This is a general rule of equity in suits to remove a cloud on a title, and it is embodied in sections 3412–3413 of the Civil Code of Califoruia, which provide substantially that where the instrument in void on its face, or requires the prodution of any other instrument showing such nullity, no cloud on the title exists.

The earliest California case or the subject is that of Pixley v. Huggins, 15 Cal. 127 (the opinion in which was delivered by Justice Stephen J. Field), and the rule announced then is the one subsequently incorporated in the sections of the Civil Code above referred to.

In Williams v. Corcoran, 46 Cal. 553, it was held that where a statute, under which a tax was levied, was in violation of the provisions of the State Constitution, a deed, based on a sale made for such taxes, would be void on its face, and would, therefore, not constitute a cloud on the title.

The same rule was announced by this court

in the case of Hannewinkle v. Georgetown, 15 Wall. 547, and is recognized in the case of Reynolds v. Bank, U. S. 405, in which latter case it was held that while a deed, void on its face, did not cast a cloud upon the title which a court of equity would undertake to remove, yet, where the State statute declared that such an instrument did in fact constitute a cloud, the federal courts had jurisdiction in equity to cancel it.

In order to give jurisdiction to the circuit court it was necessary for the bill to show that there was a real dispute or controversy between the parties involving a federal question which *must necessarily be determined* in the case.

It is not enough that it may become necessary during the progress of the case to give a construction to a law or treaty of the United States or to some provision of the federal constitution, but it must appear that such question will have to be determined in order to decide the case.

As stated in St. Joseph, etc., R. R. Co. v. Steele, 167 U. S. 559: "Not every mere allega-"tion of the existence of a federal question in a "controversy will suffice for that purpose. "There must be a real substantial question on "which the case may be made to turn."

So in New Orleans v. New Orleans W. W. Co., 142 U. S. 79, it is held that a bare claim that rights possessed under the federal constitution are infringed, without any real foundation

for such claim, is not sufficient, and the court says:

"While there is in the answer of the city a formal averment that the ordinance impaired the obligation of a contract arising out of the act of 1877, which entitled the city to a supply of water free from charge, the bare averment of a federal question is not, in all cases, sufficient. It must not be wholly without foundation. There must, at least, be color of ground for such averment, otherwise a federal question might be set up in almost any case and the jurisdiction of this court invoked simply for the purpose of delay."

In Hamblin v. Western Land Co., 147 U. S. 542, the last cited case was approved, and the court said: "A real and not a fictitious federal "question is essential to the jurisdiction of this "court over the judgments of state courts."

So, in St. Louis, etc., Ry. Co. v. Missouri, 156 U. S. 478, the last two cases are cited with approval, and the following language is used:

"The bare averment, in the answers, of supposed infringements in the proceedings of rights possessed by the respondents under the constitution of the United States, will not alone suffice."

See also Muse v. Arlington Hotel Co., 168 U. S. 430.

It is alleged in the bill that the appellants are in possession of the property in controversy, and it is not suggested that the city of Los Angeles is interfering with such possession in any way, or is seeking in any manner to enforce any of its rights under the charters which are attacked.

There is, therefore, no controversy which is the subject of a suit in equity in the United States Circuit Court.

Moreover, it does not appear that the question concerning the effect of these charters would ever have been passed upon by the circuit court, for if it were determined that the city was entitled to the exclusive use of the waters in question by reason of its ownership of its pueblo lands and by virtue of the grant made to it by the laws of Spain and Mexico, then it would not be necessary to determine whether the charters had the effect of divesting appellants of their interest in those waters.

As a matter of fact it has several times been decided by the Supreme Court of California that the city did have the paramount and exclusive right to the use of all of the waters of the Los Angeles river to the extent of the needs of the municipality.

In Elms v. City of Los Angeles, 58 Cal. 80, the ground of the division was the adverse user of the waters for nearly a century.

In Vernon Irrigation Co. vs. City of Los Angeles, 106 Cal. 237 *Supra.*, it was determined that that the city's ownership existed also by virtue of the laws of Spain and Mexico which vested in pueblos the right to the waters of all streams used by the inhabitants.

In city of Los Angeles v. Pomeroy 124 Cal. 597, the doctrine established in the Vernon Irrigation Co. case, with regard to the rights of pueblos to irrigable streams, was re-affirmed, and it was held that waters flowing beneath the surface were part of the stream and were governed by the same rules as the surface flow.

The Circuit Court would have had no jurisdiction to enter upon the hearing of the case except for the purpose of determinig the federal question, and, therefore, if the determination of other questions would dispose of the case before the federal one was reached, this circumstance shows that it is a "potential" and not an actual case, and thus comes within the rule declared in New Orleans v. Benjamin 153 U. S. 654.

Appellants are not content to set up the charters as creating the cloud on their title, but seek to have such title quieted against *all possible claims* of the city, and it is not contended that the Circuit Court would have jurisdiction (so far as relates to the constitutional question), over

any of the claims except the one based on the charter provisions.

The rule established in this Court on appeals from and writs of error to the highest State court, is that, if the State court decide the case upon a ground not involving a federal question, (although such question was properly raised and determined adversely to the appellant), the judgment will not be reviewed by this court.

Gettis v. Stinchfield, 161 U. S. page —;
McManus v. O'Sullivan, 91 U. S. 578;
Powell v. Supervisors, 150 U. S. 433, *supra*;
Castillo v. McConnico, 168 U. S. 674;
Eustis v. Bolles 150 U. S. 361;
Pierce v. Somerset Ry. Co., 171 U. S. 641;
Seneca Nation v. Christy, 162 U: S. 283;
Columbia W. P. Co. v. Columbia El. Str. R. L. and P. Co., 172 U. S. 474;
Allen v. S. P. R. R., 173 U. S. 479;
White v. Leovy, 174 U. S. 91.

The same rule should apply in suits originally brought in the circuit court, and if it appear that the federal question need not necessarily be determined, then the controversy will not be deemed to involve such question so as to give jurisdiction.

That is the exact state of facts in the present case. If the suit had been originally brought in the State court, it could not have been removed

to the federal court, as it would have been impossible to determine, in advance, that the decision of the former court would not have sustained the title of the City on some ground other than the sufficiency of the charters to divest the property of the appellants here.

In the case of Little York G. W. and W. Co. v. Keyes, 96 U. S. 199, which was attempted to be removed by defendant to the United States Circuit Court, this Court, in affirming the order of the Circuit Court remanding the case to the State Court, used the following language: "A case cannot be removed from a State Court simply because, in the progress of the litigation, it may become necessary to give a construction to the constitution or laws of the United States. The *decision* of the case must depend upon that construction. The suit must, in part, at least, arise out of a controversey between the parties in regard to the operation and effect of the constitution or laws upon the facts involved."

This Court has held that the plaintiff cannot anticipate the defense in order to bring in a federal question.

Shreveport v. Cole, 129 U. S. 36;

Tennessee v. U. & P. Bank, 152 U. S. 454.

This is what the appellants seek to do here—anticipate a defense—which however, the appellee declines to make.

II.

Even if the bill could be considered as sufficiently setting forth a prima facie controversy concerning the effect of the grant contained in the charters, yet, when the City expressly disclaimed any interest in the property in question under those charters, so far as such interest was ever vested in the appellants or their predecessors in interest, this effectually disposes of the case, because there was no issue left for the Circuit Court to determine.

The bill avers that the defendant claims to own the property in controversy under the charters and by virtue of the laws of Mexico, and, although such an averment, so far as it relates to the acquirement by the City of the property of appellant, under the charters, is pregnant with absurdity (because neither the City of Los Angeles nor any rational being would ever make such an unfounded claim), yet, supposing that the Court would seriously consider it, the moment that an answer came in denying that any such claim was made, and expressly disclaiming the right, it became manifest that no dispute in fact did exist between the parties.

The case of Robinson v. Anderson, 121 U. S. 522, (cited by the learned judge of the Court below in his opinion), is conclusive on this point.

The contention of appellants that the city

could not disclaim having acquired any rights under the charters is a strange one.

Complainants themselves alleged expressly that the defendant acquired no right under the charters, and the answer admitted this to be the case.

It is still asserted by appellants that the charters were ineffectual to pass their property rights to the City, and we admit it; so that we fail to see how the City, through its counsel, could be precluded from admitting the truth of an allegation where all of the parties agree that the facts are correctly stated.

Even if the City could not be bound by the admission of its counsel of the truth of a matter contrary to the fact, certainly the rule would not apply in a case where the charge was admitted to be true by all of the parties.

But appellants cannot and do not say that the City has any title under the charters which its counsel are prevented from disclaiming, and the case is simply one of an admission according to the undisputed truth.

But the rights of the City with regard to the ownership of property are like those of a private individual, and are subject to all of the rules of evidence and pleading which prevail in litigation between natural persons; and this is shown by the authorities cited in the opinion of the court below.

In this connection it may be well to state that the disclaimer in the answer of any rights under the charter is a qualified one, being limited to any title that was ever vested in the appellants, or their predecessors; for there may have been some interest vested in the State by reason of having succeeded to the sovereigns rights of Mexico in innavigable streams as suggested in Lux v. Haggin, 69 Cal. 336–340, and as the charter of 1850 was passed prior to the one adopting the common law, the title of the State vested in the City. [Stats. 1850 pp. 155, 219].

It is contended that the case arises under the treaty of Guadalupe Hidalgo.

We do not see how such a contention could be made except upon the assumption that that treaty guarantees certain rights to the complainants which the City charters, already referred to, purport to take away.

The appellants invoke the protection of the treaty, and as protection presupposes an assault, there would be nothing to put the treaty into operation until something had been done to take away the appellants' property.

A case certainly cannot arise under the treaty so long as the rights, which are accorded by it, remain undisturbed.

But however this may be—whether the State ever had any interest in the waters of the Los

Angeles River or not—the answer does positively and unequivocally repudiate claiming any right that was ever vested in appellants or in any one from whom they derive title.

The distinction between the case of Illinois v. Illinois Central R. R. Co. 33 Fed. 721, (cited by appellants), and the present case is obvious. There, a public statute, repealing another statute, which had attempted to divest the State of Illinois of its sovereign rights to lands in the bed of Lake Michigan, was disclaimed under in a suit brought by the State to enforce those rights, and it was held that it was not competent for the Attorney General to do so. On appeal, (146 U. S. 387), this Court decided that the repealing Act was valid, and that the legislature did not possess the power of granting away lands held by the State as a public trust.

What we have already said, in discussing the question as to whether or not the bill presents the question of a violation of the Constitution of the United States, applies here with regard to the claim that the treaty rights were attempted to be taken away by the Legislature.

With regard to the capacity of the appellants to invoke the protection of the treaty, we submit that there is nothing in its provisions which covers the present case, because, upon referring to that treaty, we find nothing therein which purports to protect complainants.

The provisions in reference to the rights of private Mexican citizens are contained in Articles VIII and IX.

Article VIII guarantees only the rights of ownership in favor of Mexicans who do not elect to become citizens of the United States, and their heirs and grantees; and it does not appear that the plaintiffs come within this category, but the contrary is actually the fact.

Article IX protected the rights of Mexican citizens, who elected to become citizens of the United States, *only until California should have been admitted to the Union*, after which time they became a part of the people of the State, with the same guarantees, and no other, that their fellow citizens had.

This question was squarely decided by this Court in the case of New Orleans v. Armas. 9 Peters 223, construing a similar provision in the treaty between France and the United States. There the plaintiff claimed title from the Spanish government, and the defendant, City of New Orleans (plaintiff in error), claimed it as part of the city lands, and as not grantable by the crown.

The Court, in its opinion, stated that "*to sustain the jurisdiction of the Court* in the case now under consideration, *it must be shown that the title set up by the City of New Orleans is protected by the treaty* ceding Louisiana to the United

States, or by some act of Congress applicable to that title."

The provisions of the treaty were: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted according to the principles of the Constitution to the enjoyment of all the rights etc., of citizens of the United States, and *in the meantime* they shall be maintained and protected in the free enjoyment of their liberty, property and religion."

The Court says: "Had any of these rights been violated, the individual might have brought his case in this Court under Section 25 of the Judiciary Act. But this stipulation ceased when Louisiana was admitted as a State. The right to bring questions of title, decided in the State Court, before this tribunal, is not classed among these immunities. The inhabitants of Louisiana enjoyed all the advantages of American citizenship in common with their brethren in their sister States when their titles are decided by the tribunals of the State."

It is also said (with regard to the contention that the City of New Orleans was protected in its rights to the land in controversy by the general terms of the treaty): "The judgment of the State Court appears on the record to have been determined on (and certainly ought to have been determined on) the opinion entertained by

that Court of the legal rights of the parties under the crowns of France and Spain. The case involves no principle on which this Court could take jurisdiction which would not apply to all the controversies respecting titles originating before the cession of Louisiana to the United States. It would also comprehend all controversies concerning titles in any of the new States, since they are admitted into the Union by laws expressed in similar language."

This case does not seem to have been cited, and the distinction between the rights of Mexican citizens who elected to become citizens of the United States and the rights of those who continued to be Mexican citizens was not apparently noticed, in Phillips v. Mound City Land & Water Assoc., 124 U. S. 605, and other cases passing upon the rights of owners of Mexican grants in California.

Again, even if such rights continue to be protected, complainants could not invoke that treaty in the present suit, for the reason that (as stated in the last cited case of Phillips v. Mound City Land & Water Assoc) the treaty "neither created the rights nor defined them; their existence was not made to depend on the constitution, laws or treaties of the United States. There was nothing done but to provide that if they did in fact exist under the Mexican Law, or by reason of the action of the Mexican authorities, they

should be protected. Neither was any provision made as to the way of determining their existence. All that was left by implication to the ordinary judicial tribunal. Any Court, whether state or national, having jurisdiction of the parties and of the subject matter of the action, was free to act in the premises."

Complainants here claim that the effect of the Mexican grants, under which they derive title, was to vest in them the percolating water in the lands, if any existed; but whether this is true or not depends, not upon the constitution or a law or treaty of the United States, but upon the law of Mexico and of California regulating this matter, which it is always competent for the government exercising police powers to provide for.

In the Phillips case, the plaintiff in error contended that the treaty of Guadalupe Hidalgo protected him in the rights which were vested in his grantor at the time of the cession to the United States, and that, at that time, his grantor held a portion of a Mexican grant (afterward patented) by virtue of a partition had under the Mexican regime, and that the effect of the United States patent was to vest in him the title to that portion of the grant and not simply an undivided interest in the whole ranch.

The doctrine announced in that case was sustained in California Powder Works v. Davis, 151

U. S. 395, which was decided in the State Court on a writ of error.

There the respective parties each claimed under a different confirmed and patented Mexican grant, and the State Court had found that one of the grants had been, by forgery, antedated. This Court held that the determination of that fact was within the province of the State tribunals, and that, although such determination limited the effect of the grant and the patent issued thereon, yet no federal question arose.

With regard to the other phase of the question, as to whether the case arises under a law of the United States, we think that the above cited case of Phillips v. Mound City Land and Water Assoc. conclusively determines this question in the negative.

The right to the percolating waters in the lands described in the bill is not derived through a law of the United States, if such right ever existed; it must be claimed under the laws of Mexico in force at the time of the cession of California to the United States.

The patent for a confirmed Mexican grant is altogether different from one of a mining claim or government land.

The latter passes property which was confessedly that of the United States; whereas the former not only does not purport to convey the property of the United States, but is equivalent

to an express declaration that the land never belonged to the United States.

It is settled that the rights of private individuals to property in a ceded territory remain the same after the cession as before.

Mitchell v. U. S., 9 Peters 711.

U. S. v. Moreno, 1 Wall. 400.

Adam v. Norris, 103 U. S. 59[illegible].

The patent for a confirmed Mexican grant in California does not pass any title, but is merely equivalent to a declaration that the original grant was valid, and that the rights of property are such as attached to the grant at the time of the cession of California to the United States.

The case of Botiller v. Dominguez, is not in conflict with this position, but is in accord with it.

In that case it was held that the failure to present for confirmation a Mexican grant barred the rights of claimants.

On the other hand, in Adam v. Norris, 103 U. S. 591, *supra*, it was decided that where a patent had issued for a confirmed Mexican grant, such patent was an admission that the *rightful ownership had never been in the United States*, but at the time of the cession it had passed to the claimant and to those under whom he claimed.

There is no distinction in this regard between perfect and imperfect grants, for the patent has the conclusive effect of determining that the original grant was valid.

Of course, if the patent were determined to be void, it would be a question arising under the laws of the United States, but, conceding that the patent is valid, it belongs to the State Courts to determine what rights were attached to the patented land as easements, or to what servitudes it was subject during the existence of the Mexican law.

If the original grantees had conveyed their title prior to the cession to California, the confirmed title was subject to the conveyances already made and to all the contracts entered into by the then owners of the grant; and, although it might require a suit to enforce some of these rights, as for instance, to obtain a conveyance of the legal title passed by the patent, yet the confirmation of the grant and the issuance of the patent would not affect any of these rights.

On the contrary, the Act of March 3, 1851, provides that the patent shall not affect the interests of third persons, showing that it was not intended to change the title but to confirm it as it already existed.

This is shown in the case of Phillips v. Mound City Land & Water Assoc., in which it is expressly declared that the patent did not, in equity, affect the rights of those who acquired title under the original grantees.

The case of Botiller v. Dominguez, *supra*, also reiterates the same doctrine, and it is there said

by the Court, "obviously it [the act of March 3, "1851] was not intended to adjust or settle titles "between private citizens making claim to the "same lands."

The determination of what rights belong to lands included in a Mexican grant, and for which a patent has been issued, so far as relates to percolating water or riparian rights, or easements or servitudes, depends not on the laws of the United States, but upon those of Mexico or of this State.

In Kennedy v. Hunt, 7 How. 590 (cited and approved in Phillips v. Mound City, etc.), it was determined by the United States Supreme Court that the question of the rights to alluvion claimed by two different parties, by one under a Spanish grant confirmed by treaty, and by the other under an act of Congress, involved no federal question, but belonged to the local law of the State to determine what the legal appurtenances to those lands, as well as other lands belonging to private individuals, were.

See also Eldridge v. Trezevant, 160 U. S. 452.

Hardin v. Jordan, 140 U. S. 371.

It does not appear, nor can it be presumed, that the validity of the patents, under which complainants claim, will ever be attacked, and as said in Los Angeles F. & M. Co. v. Hoff, 48 Fed. R. 840, such patents conclusively establish the

validity of the grants upon which they are based and the correctness of the location of the land granted.

But the location of the land, as well as the rights which attach to it, or to which it is subject, depends upon what contracts the former owners have entered into, and what the local law, both of Mexico and of the state of California, was or is.

It is true that the Supreme Court of California has held that percolating waters belong to the owner of the soil and can be taken by him for his own benefit; but this ruling is based, not on an act of Congress, but upon the local law, and it was the province of the State Court to determine what this local rule was, and it might have decided the reverse without involving a federal question.

A United States patent may, in fact, be defeated, in part at least, by an erroneous determination in regard to the boundaries of patented land; but this fact does not prevent the State Courts from passing on the question of the boundaries, nor give the federal courts jurisdiction to revise such action.

The only requirement is that it be conceded that the patent was valid and passed title to the land therein purported to be granted; but the location of the boundaries of these lands is a

fact, like any other fact, to be determined by the local courts

The authorities cited by appellants are not in conflict with those cited by us.

With regard to the cases of Martin v. Hunter's Lessee, 1 Wheat. 304, Smith v. Maryland, 6 Cranch, 286, Owings v. Norwood's Lessee, 5 Cranch. 344, all involve confiscation acts which were the only basis of title opposed to the right of parties claiming under the treaty between the United States and Great Britain; in other words, the question was whether or not the State statutes were valid, for if they were not, then the title of the claimant (which was alleged to have been divested by the act of confiscation), was indisputably valid and sufficient.

The case of Glasgow v. Baker, 127 U. S. 560, arose on the construction of an act of Congress passed to carry out treaty stipulations, and had the effect *itself* of passing title in *praesenti*, and as the result of the suit turned upon the construction to be given to this act, this Court properly held that it had jurisdiction.

The case of Guitart v. Stoddard, 16 How. 508, explains the character of the rights created by the act of Congress of 18 2, which was construed in the case of Glasgow v. Baker *supra;* and it is there said that that statute had the effect of transferring the title, which had not passed from the former government.

In Knight v. Land Association, 142 U. S. 161, the decision of the State Court had the effect of taking away land which was included in the patent for the Pueblo of San Francisco, thus destroying the United States patent and giving the land to the grantee of the State, which claimed under an act of Congress subsequent to the treaty.

No one could doubt that this Court had jurisdiction in such a case, and to hold otherwise would be to say that the acts of Congress and proceedings taken under them could be made nugatory by a decision of the State Court.

So it is with the other cases cited by complainants—they either have no bearing upon the question, or are authorities in our favor.

The case of McDonough v. Millaudon, 3 How. 693, illustrates the principle for which we contend, that where the decision of the State Court is not in regard to the construction of an act of Congress, but, on the contrary, the act is given its full force and effect, and the only thing construed or considered is the law of the State or of the former government, or some question of fact, as with reference to boundaries, no federal question arises.

We quote from that case:

"The treaty with France of 1803 gave no further sanction to the boundary of McDonough's [claimant] title than it had by the grant; in respect

to its validity, the decision of the State Court supported the claim to the same extent that the treaty protected it, and therefore the decision was not opposed to the treaty."

The Court then goes on to show that the McDonough title was a perfect one, and was confirmed by Congress as such, though such confirmation was not necessary, as it was good on general principles of law; (the language of the Act being that all complete titles be recognized valid and complete against the United States), and then say:

"But in McDonough's case, as in other similar ones referred to above, the recognition extended only to the boundary the grants themselves furnished according to their landmarks and true construction under the local laws in virtue of which they were obtained. * * * The State Court held McDonough's title to be valid to every extent that it has been recognized by the United States, and only applied the local laws of Louisiana in its construction, so far as they had a controlling influence on the manner in which the side lines should be extended from the Mississippi river towards Lake Maurepas; and, as, in so doing, neither the treaty of 1803, nor any act of Congress or authority exercised under the United States, was drawn in question, this Court has no jurisdiction to revise the decision of the Court."

So in our case, the Court is informed by the pleadings that the patents to the various Mexican grants under which complainints claim title are conceded to be valid, and to pass the

lands which they purported to grant, and it is only with reference to the percolating waters which find their way into the Los Angeles river, and which are claimed by the City under a species of easement, that the dispute exists.

To determine this question requires a construction of the laws of Spain and Mexico, and not of the United States nor of the treaty with Mexico.

This easement depends upon local laws, and is a police regulation which the State is competent to make.

Claims of easements were not required to be presented by the Act establishing the Land Commission for California, but the question of their existence was left to be determined by the local Courts.

Counsel for appellants discuss the question concerning the rights of the City of Los Angeles as the successor of a Mexican pueblo to its pueblo lands and to the waters of the Los Angeles river, and say that "it is more than doubtful whether there was any such thing as a Spanish pueblo here at the time the grant was made", and refer to the case of the United States v. Santa Fe, 165 U. S. 675. We agree with counsel that these questions are immaterial on the present appeal, but, if they were, it would perhaps be sufficient to say that the last cited case involved the rights of a municipal corporation

which embraced the territory occupied as a town during the Mexican regime in New Mexico, but the town itself was not a pueblo established by the government; and herein lies the distinction between that pueblo and the predecessors of the City of Los Angeles

The pueblo of Los Angeles was duly founded as a government act, in the year of 1781, and thereby became entitled to the four square leagues which were afterwards confirmed and patented to the City of Los Angeles, as successor of the original pueblo.

In the cases in the California Reports, already referred to by us, establishing the rights of the City to the waters of the River, as well as in the case of Lux v. Miller, 69 Cal. 255, *supra*, the facts concerning the establishment of the pueblo, as well as the law which governed its rights, are discussed at considerable length, and should this Court desire to examine into the subject, we refer to those decisions as containing everything that need be said.

We respectfully submit that the Circuit Court properly dismissed the bill for want of jurisdiction, and that the decree should be confirmed.

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